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OF THE EARTH
ACTION**

October 14, 2008

Madelynn M. Lane
Chief, Authorized Branch
Reports Analysis Division
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Form 5, 24 Hour Notice (12/21/07)

Dear Ms. Lane;

This letter responds to your request for additional information dated September 11, 2008 regarding the December 21, 2007 Form 5 24-hour notice filed by Friends of the Earth Action ("FOEA"). You assert that "Commission regulations require that [FOEA] disclose identification information for each individual who made a donation used to fund the independent expenditure report," and request that FOEA "amend [its] report to provide the missing information," citing 11 CFR §§ 109.10(e)(1)(vi) and 114.10(f). That is an incorrect statement of the applicable law and FOEA's obligations under the Federal Election Campaign Act ("the Act").

The Act requires the identification on a 24-hour Form 5 notice only of "each person who made a contribution in excess of \$200 to the person filing such statement which was made for the purpose of furthering an independent expenditure," 2 U.S.C. § 434(c)(2)(C), which the applicable regulation interprets to mean "furthering the reported independent expenditure." 11 CFR § 109.10(e)(1)(vi). *See also* FEC, "Campaign Guide for Corporations and Labor Organizations" 36 (2007). Accordingly, there is no automatic requirement that a Form 5 filer report incoming donations, because there may be none that were received "for the purpose of furthering" the independent expenditures as to which the filer discloses its disbursements.

Your citation to 11 CFR § 114.10(f) does not identify an alternative basis for the reporting requirement that you assert. That regulation requires that when a qualified nonprofit corporation ("QNC"), such as FOEA, "solicits donations, the solicitation shall inform potential donors that their donations may be used for political purposes such as supporting or opposing candidates." That legally required notice self-evidently does not assert that any donor's donation *will* be used for "political purposes," nor does it assert that it will be used to fund *independent expenditures*, let alone independent expenditures pertaining to a particular candidate, and let alone any particular independent expenditure. No donor who responds to such a generalized notice could possibly be construed to donate in order to fund a specific independent-expenditure